

North Carolina State
Long Term Care
Ombudsman Program

2011 Annual Report



*Promoting quality of life
and quality of care
for long term care residents.*



North Carolina Department of Health and Human Services

Division of Aging and Adult Services

2101 Mail Service Center • Raleigh, North Carolina 27699-2101

Tel 919 855-3400 • Fax No. 919 715-0023

Beverly Eaves Perdue, Governor
Albert A. Delia, Acting Secretary

Dennis W. Streets, Director
919-855-3400

I am pleased to submit the 2011 North Carolina Long Term Care Ombudsman Program Annual Report for federal fiscal year October 1, 2010 through September 30, 2011.

This Annual Report provides an overview of the work accomplished by community advisory committee volunteers, Regional Long Term Care Ombudsmen and the Office of the State Long Term Care Ombudsman this program year. Long Term Care Ombudsmen strive to protect residents' rights, empower families and educate consumers about long term care issues. Examples of cases are included in the annual report that I believe illustrate the difference North Carolina's Ombudsman Program makes in the lives of long term care residents and their families every day.

North Carolina General Statute §§ 143B-181.18(8) requires the Office of the State Long Term Care Ombudsman to prepare an annual report. A variety of information and data are included that reflect the Long Term Care Ombudsman Program's activities and successes this year.

The North Carolina Long Term Care Ombudsman Program had a very busy and productive year in 2011. I invite you to contact me if you have questions or comments about the report.

Sincerely,

A handwritten signature in cursive script, reading "Sharon C. Wilder".

Sharon C. Wilder
State Long Term Care Ombudsman



Table of Contents

2011 Services Overview	vi
2011 – The Year in Review	1
Long Term Care Ombudsman Program History and Purpose	7
Long Term Care Ombudsman Program Organization	9
Long Term Care Ombudsman Program Services	11
Nursing Home and Adult Care Home Complaints: Charts and Tables	17
Complaint Management Summary – 2011	19



Appendices

APPENDIX A: Nursing Home and Adult Care Home Residents' Rights	39
APPENDIX B: FFY 2011 Data Tables from N.C. Ombudsman Reporting Tool	41
APPENDIX C: Older Americans Act Title III, Section 2 and Title VII	45
APPENDIX D: North Carolina LTC Ombudsman Program General Statute	55
APPENDIX E: North Carolina Map of Area Agencies on Aging	61



2011 Services Overview

October 1, 2010 – September 30, 2011

State and Regional Long Term Care (LTC) Ombudsman Program

3,187	Complaints handled by the LTC Ombudsman Program
1,733	Complainants assisted by State and Regional LTC Ombudsmen
6,450	Resident visits made in adult care homes and nursing homes
661	Facility licensure surveys observed
162	Resident Council meetings attended
98	Family Council meetings attended
7,520	Technical assistance provided to individuals on long term care issues
2,651	Consultations to LTC providers
420	Training sessions provided for staff in LTC facilities
810	Community education workshops conducted
6,356	Individuals who attended community education, provider in-services or training provided to Community Advisory Committees on Elder Abuse Awareness and Prevention
2,176	Hours spent training community advisory committee members and new ombudsmen

2011 – Year in Review

The North Carolina Long Term Care Ombudsman Program embarked on a long-range plan to raise awareness of the activities and opportunities underway nationally to promote cultural transformation practices that facilitate resident-centered care and service delivery within long term care facilities. One goal of the plan was to provide regional ombudsmen with enhanced training about the concepts central to the development of Culture Change activities within a facility. A second goal was to develop training events that demonstrated the “How of Culture Change” for both regional ombudsmen and long term care facility management teams who were interested but hesitant to begin.

Initially, the State Office conducted a survey of regional ombudsmen to help identify resources and training needs that they felt would help them become stronger agents for change and proponents of resident-centered care. The survey results identified several areas around which ombudsmen needed additional guidance, including how to begin a meaningful conversation with long term care administrators regarding what amounts to a culture change within their facilities, and how to discuss potential concerns, such as

potential economic barriers that could prevent facilities from committing to such a project and concerns that some families may not want to upset the status quo. Once these and other potential barriers were identified, the State Office staff began developing a plan to bring regional and national culture change professionals to North Carolina to help address key areas identified through the survey.

A first step involved committing the May, 2011 Quarterly State Ombudsman Training to presentations about aspects of fostering Culture Change. Training topics included work of the North Carolina Coalition for Long Term Care Enhancement, a provider’s perspective regarding long term care ombudsmen involvement with culture change initiatives, and a review of various models of nursing homes (The Neighborhood Model, The Household Model or The Small Household Model) that are working towards creating freedom and the comfort of a real home for a small group of residents. The five-hour training event concluded with a general discussion of the overall survey results and a brainstorming session about ways the North Carolina Long Term Care Ombudsman Program could engage collaboration and support

for a series of Culture Change workshops across the state.

To illustrate the potential of these workshops, Carmelita Karhoff, an ombudsman at the Triangle J Council of Governments Area Agency on Aging, reviewed her agency's efforts with local nursing home administrators to establish the Durham County Nursing Home Learning Collaborative to encourage peer-to-peer education about successful implementation of culture change projects. Active dialogues continued in-between formal learning sessions that helped disseminate "lessons learned" to long term care facilities in adjacent counties. Especially important were ideas for implementing changes that, while not requiring significant expenditures, would necessitate an internal evaluation of staff viewpoints and management styles before making a commitment to a systems reform. After experiencing success with incorporating new ideas, some facility management teams were inspired to continue efforts to meet their established program ideals. Many staff were impressed that incremental systemic changes and consistency could have such a visible and lasting impact on the lives of their residents, staff, and families.

During 2011, the General Assembly, introduced legislation that altered

the language of Right Number Seventeen in the Adult Care Home Residents' Bill of Rights. Many advocacy groups, including the Long Term Care Ombudsman Program, were involved in numerous meetings to discuss the negative effect that House Bill 677 could have on the safety and well-being of adult care home residents faced with notices of discharge. As a result of strong vocal and written advocacy efforts, the version of House Bill 677 that was ratified included language changes that protected most of the discharge rights of adult care home residents; however, the new language no longer affords adult care home residents the same discharge rights as those of nursing home residents. The most significant change in the new legislation is the loss of the right to appeal when the discharge is based on a change in their level of care unless two physicians disagree about the level of care needed to maintain the resident. In addition, there is also a new requirement to create county-level transfer/discharge teams external to the facility that would be responsible for assisting an adult care home in locating suitable housing for difficult-to-place residents. The discharge teams are comprised of representatives from local departments of social services and local mental health management entities. Regional ombudsmen can become involved

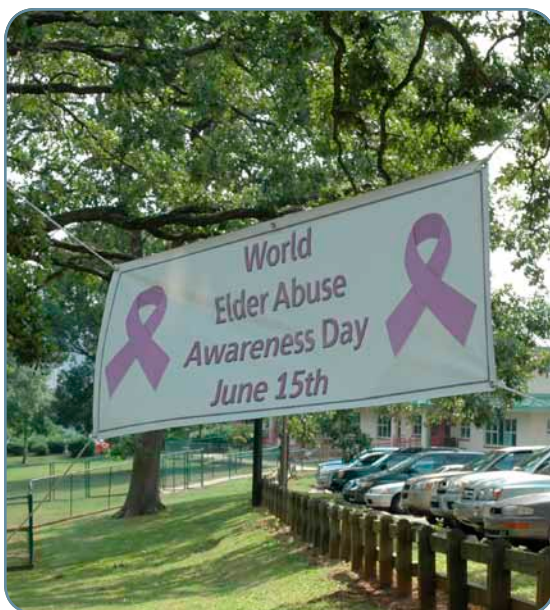
in these proceedings at the direct request of the resident and/or their legal representative, using the Ombudsman Program's written informed consent protocols to divulge privileged information. This has added a new dimension for all Regional Ombudsmen in representing residents' interests during discharge from an adult care home because the discharge teams focus is limited to finding another placement for the resident.

During the year, the Office of the State Long Term Care Ombudsman staff, along with colleagues in the Division's Adult Services Section, met regularly to plan the Division's annual observance of World Elder Abuse Awareness Day (WEAAD) on June 15th 2011. The group broadened the scope of the observance to include vulnerable adults as well as expand the timeframe for awareness activities.

Vulnerable Adult and Elder Abuse Awareness "Month" was recognized from May 6th–June 20th, 2011. These dates were chosen to coincide with both Mother's Day and Father's Day and to allow time for a concerted effort to educate and raise awareness about abuse of elderly and vulnerable adults across the state. World Elder Abuse Day was commemorated by the Division through a variety of events and activities, including presentation of an annual gubernatorial proclamation, the decoration of the trees on the

Dorothea Dix campus with large lavender bows, a large banner across the Division's entrance proclaiming elder abuse awareness, the creation and distribution of over 1,000 lavender lapel pins attached to elder abuse observance cards, and the distribution of "Fact Sheets" for both print and broadcast media on various topics related to elder abuse.

The Secretary of the North Carolina Department of Health and Human Services, Lanier Cansler, recorded a public service announcement encouraging all citizens to become more aware of and play an active role in the recognition and reporting of elder abuse. The Division culminated the more than month long observance of World Elder Abuse Awareness Day by hosting a Remembrance Walk and open house on June 13th. Supporters and staff chose to participate in either a one mile or half-mile walk around the grounds of the Department of Health and Human Services campus. Along each route at specific intervals, placards were placed that provided statistical data on elder abuse and preemptive steps that any concerned citizen could use to report or prevent victimization of the elderly. The Walk began and ended at the Division's Taylor Hall building with brief presentations from the Division's Director, Dennis Streets, and other invited dignitaries. Visitors were also able to pick up printed materials



DAAS observes WEAAD 2011

1st Annual Remembrance Walk

from the display tables as well as pay tribute to older family members or clients by writing their names on oversized observance ribbons that were placed either on the wall or on the **Remembrance Tree** in the lobby of the Division.

The Strategic Alliances for Elders in Long Term Care (S.A.F.E.in-LTC)

Task Force celebrated its eighth anniversary and completed another outstanding year. Task force members participated in community education fairs, long term care trade shows and conducted several presentations during the year. The Task Force piloted ***"Staying on the Right Side of the Law,"*** to 40 long term care providers in May, 2011. The half-day workshop was designed specifically for long term care

providers and their managerial staff. The presenters focused on increasing providers' understanding of how law enforcement officers conduct on-site criminal investigations. The workshop also provided an opportunity for providers to learn that crimes committed against residents of a long term care facility can carry increased consequences including potential charges related to the fact that health care and long term care facilities are considered protected environments. Participant feedback confirmed that providers are interested in learning more about how to develop effective working relationships with their local law enforcement agencies. This workshop is slated to become a regular course offered as part of

the Task Force's ongoing training curriculum.

The ***"Investigating Crimes in Long Term Care: Voiceless Victims"*** course was taught three times during the year rotating between the eastern and western campuses of the North Carolina Justice Academy. The course has gained recognition over the past several years among officers who are pursuing advanced training to further their knowledge and aid in their career development. The information gained from surveys completed immediately after the

conclusion of the course and later via online web tools has proven very useful in keeping the course relevant to the needs of law enforcement officers. The positive responses to the ***Voiceless Victims*** course and recommendations from students who have completed it resulted in the ***Voiceless Victims*** course being listed in the Course Catalog every semester. It has become one of the most popular electives among detectives in the Academy's course roster.

Never doubt that a small group of thoughtful, committed citizens can change the world. It is the only thing that ever has.

Margaret Mead



Long Term Care Ombudsman Program History

The federal Older Americans Act established the Long Term Care Ombudsman Program in 1978. Following the successful completion of pilot ombudsman programs in seven states, authorization for a national Long Term Care Ombudsman Program was enacted requiring that every state establish a Long Term Care Ombudsman Program. In subsequent years, further amendments to the Older Americans Act expanded the jurisdiction and scope of the Long Term Care Ombudsman Program to cover both nursing homes and adult care homes. The broader scope included the creation of a network of trained volunteers, an informal complaint resolution process and systems advocacy responsibilities related to problems affecting residents in long term care facilities.

In 1989, the North Carolina State Long Term Care Ombudsman Program was codified into state law through General Statute 143B-181.15-.25, which mirrors the federal mandates set forth in the Older Americans Act for the program. The legislation includes the responsibilities of the Long Term Care Ombudsman Program

administered through an Office of the State Long Term Care Ombudsman as well as the functions of an Office of Regional Long Term Care Ombudsman Program. The North Carolina State Long Term Care Ombudsman Program is located within the Department of Health and Human Services, Division of Aging and Adult Services. The Regional Long Term Care Ombudsman Programs are housed in the 16 Area Agencies on Aging across the state.

Purpose

The North Carolina Long Term Care Ombudsman Program's mission is to protect residents' rights and improve the quality of care and life for residents in long term care facilities by providing access and advocacy services that assist residents in protecting their health, safety, welfare, and rights.¹ The program provides information to citizens about the long term care system as well as assistance accessing services. The Long Term Care Ombudsman Program's mandated responsibilities are to:

- Receive and attempt to resolve complaints made by or on behalf of residents in long term care facilities;
- Provide information to the general public on long term care issues;

- Promote community involvement with long term care residents and facilities;
- Work with long term care providers to resolve issues of common concern;
- Assist long term care providers with staff training (particularly on Residents' Rights);
- Train and provide technical assistance to community advisory committee volunteers appointed by county commissioners;
- Collect and report data regarding the number of complaints handled and other program activities;
- Carry out activities for community education and prevention of elder abuse, neglect, and exploitation; and
- Provide information to public agencies, legislators, and others on problems affecting the rights of

residents as well as make recommendations for resolution of issues identified.²

¹ 42 USC § 3001 et seq. A copy of relevant sections is attached as Appendix C.

² § 143B-181.150.25 et seq. A copy is attached as Appendix D.

Long Term Care Ombudsman Program Organization

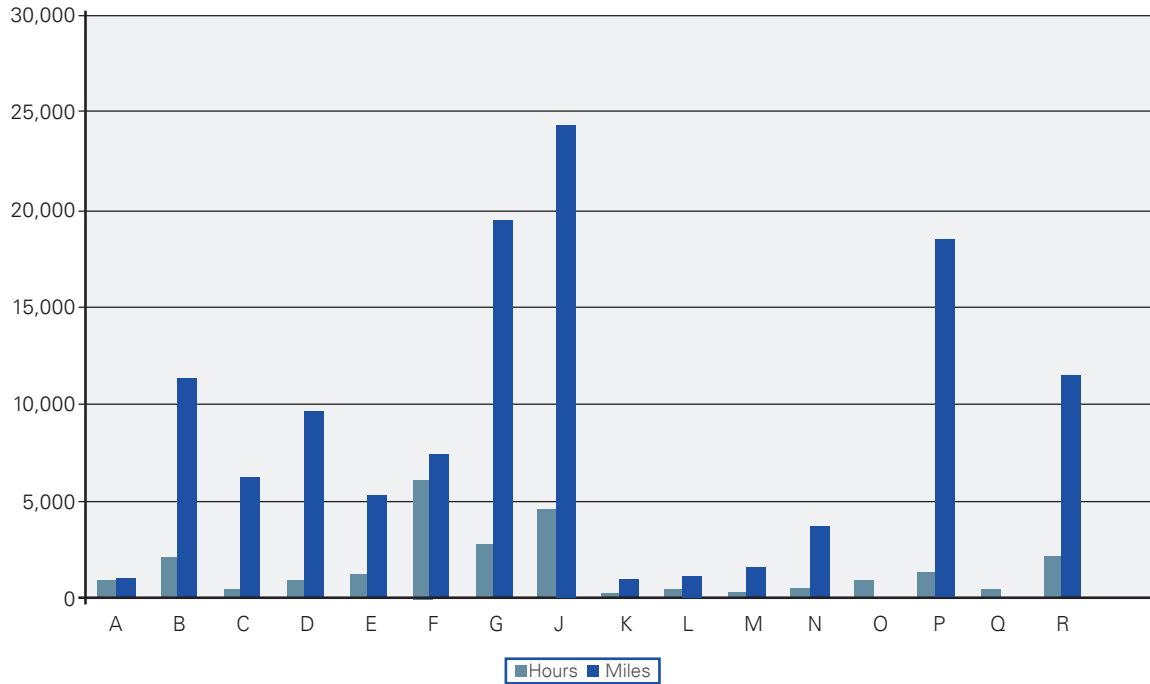
The State Long Term Care Ombudsman Program is in the Elder Rights and Special Initiatives Section of the Division of Aging and Adult Services within the North Carolina Department of Health and Human Services. The State Long Term Care Ombudsman, along with an Ombudsman Program Specialist and an Ombudsman/Elder Rights Specialist, manage day-to-day program administration. This includes ensuring that all newly hired regional ombudsmen complete the required state certification process and that the Program is in compliance with mandates in the Older Americans Act as amended and N. C. General Statutes.

The Regional Long Term Care Ombudsmen are housed in the 16 Area Agencies on Aging across the state. The Area Agencies on Aging are in regional planning councils known as Councils of Government which were created by the N.C. General Assembly in the early 1970's. As a part of the Area Agency on Aging, each Regional Long Term Care Ombudsman Program provides advocacy and direct services

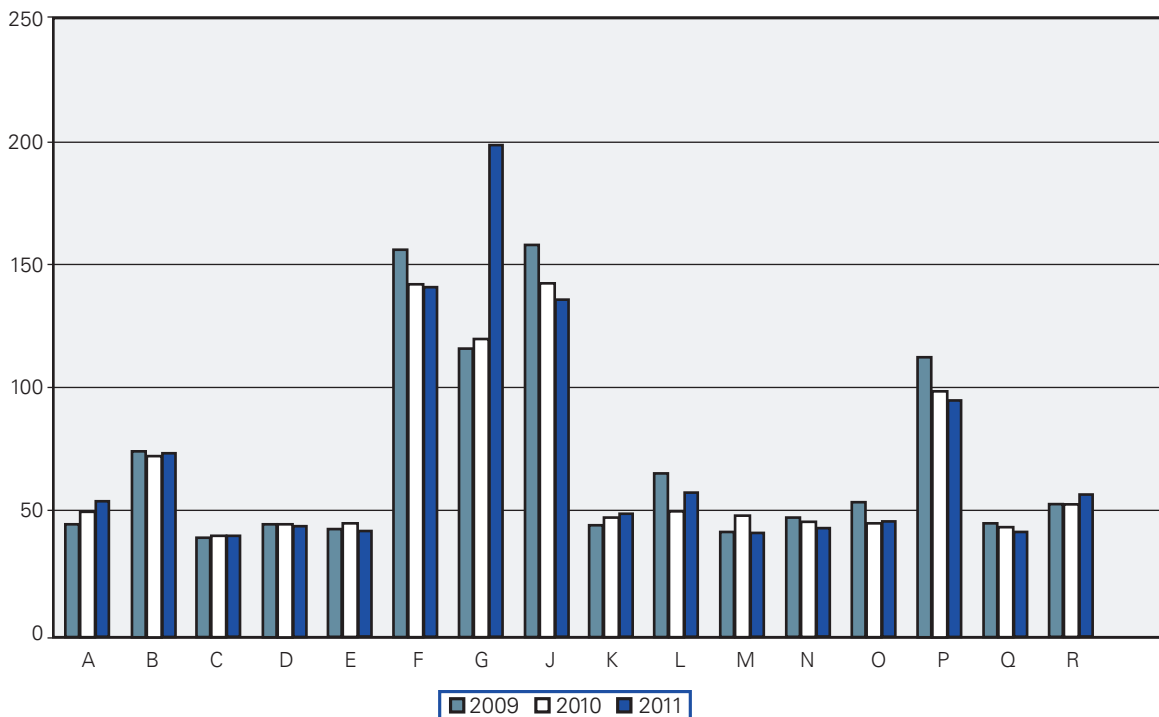
to long term care residents in multiple counties.

The community advisory committees were established through state legislation in the mid-1970's. Boards of county commissioners are authorized to appoint local citizens to serve as advocates for residents in long term care facilities. Each community advisory committee member appointed must complete 15 hours of initial training prior to assuming official duties mandated by state statute (G.S. 131D-31 and G. S. 131E-128). The regional long term care ombudsmen ensure that each volunteer completes the required training included in the State Long Term Care Ombudsman Program's Policies and Procedures to equip them to serve as 'grassroots advocates' in their communities. There are currently 1,210 trained volunteers actively serving on the adult care home, nursing home or joint community advisory committees. Regional ombudsmen submit quarterly reports that include the number of volunteer hours logged by committee members. For federal fiscal year 2011, the number of volunteer hours donated totaled 26,260. Volunteers are not required to report the number of miles they travel fulfilling their duties; however, many do voluntarily provide this information as part of their Quarterly Activity Reports.

Community Advisory Committee Hours and Miles by Region FFY 2011



Number of Community Advisory Committee Volunteers per Region



* The significant increase in Region G CAC Volunteer totals is a result of the merging of Region G and Region I during 2011.

Long Term Care Ombudsman Program Services

Information and Consultation to the General Public

Ombudsmen provided technical assistance consultations to **7,520 individuals** during 2011. The information most frequently requested involved:

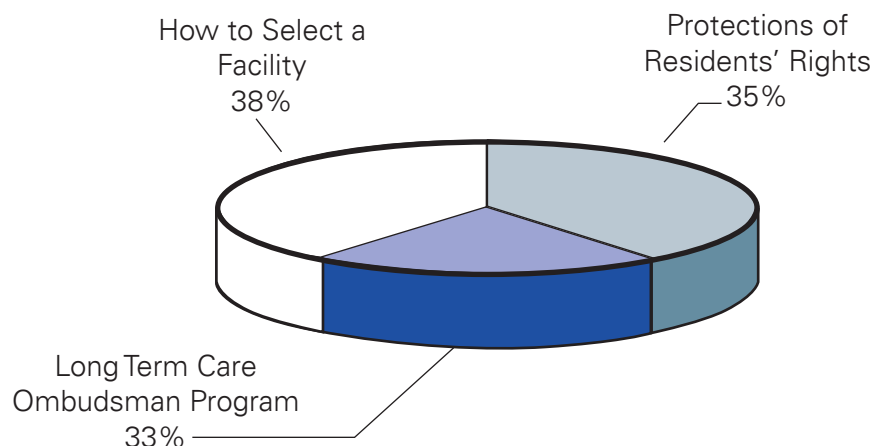
- Options for selection of a long term care facility
- Protection of Residents' Rights
- Information about the LTC Ombudsman Program.

Information and Consultation to Nursing Homes and Adult Care Homes

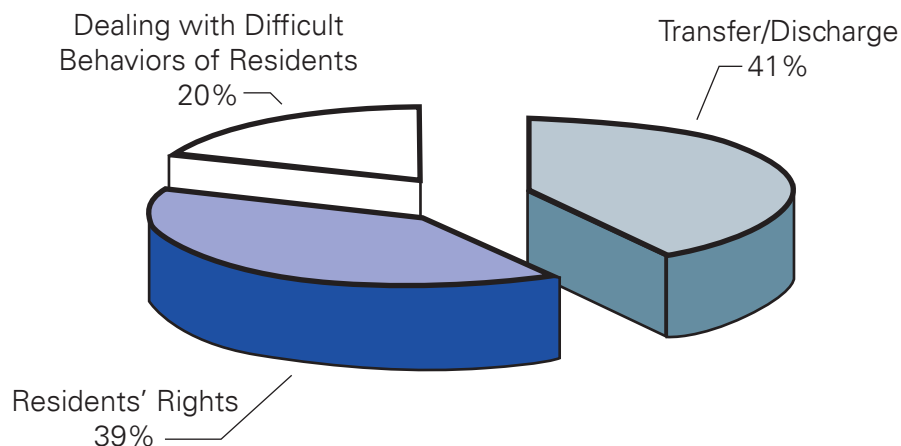
The Program responded to **2,651 consultation requests** from long term care providers regarding resident care issues such as:

- Ensuring Residents' Rights are protected when addressing issues such as transfer/discharge from a facility, roommate conflicts, elopements, falls, smoking, visitation and advance directives
- Explanation of the role of the Long Term Care Ombudsman Program, the Community Advisory Committee and Residents' Rights
- How to effectively address challenging resident behaviors and family issues.

Information and Consultation to Individuals Provided by Regional Ombudsmen Most Frequent Topic FFY 2011



Facility Consultations by Regional LTC Ombudsmen Most Frequent Topics FFY 2011



In-Service Education for Facility Staff

The Long Term Care Ombudsman Program conducted **420 training sessions** for long term care facility staff during 2011. Regional and state level ombudsmen conducted educational presentations for long term care staff across the state.

They provided training on such topics as:

- Residents' Rights and the Role of the Long Term Care Ombudsmen Program
- Elder Abuse Identification and Prevention
- Sensitivity to Sensory Losses Associated with Aging.

Community Education

The Long Term Care Ombudsman Program provided **810 educational sessions** for a variety of community audiences during 2011.

Workshop topics included:

- Ombudsman Program Roles and Services
- Older Adult Sensitivity Training
- Understanding Residents' Rights in Long Term Care Facilities
- Elder Abuse Prevention and Awareness.

Data available through the Ombudsman Program Documentation and Information System show that **209** of the educational presentations conducted for facility staff, community groups or community advisory committee members through the Long Term Care Ombudsman Program focused on topics related to **Elder Abuse Prevention and Awareness**. A total of **6,356 attendees** participated in various Elder Abuse Prevention and Awareness educational sessions.

Volunteer Management

The Long Term Care Ombudsman Program conducted **633 training sessions** totaling **2,176 hours** of training for community advisory committee volunteers and new regional ombudsmen during 2011. The Program provided consistent support to **1,210** trained, active community advisory committee volunteers.

The three most frequent topics covered during quarterly trainings for the volunteers were CAC Volunteer Development, Legislation Updates Involving Long Term Care and Culture Change in Long Term Care Facilities.

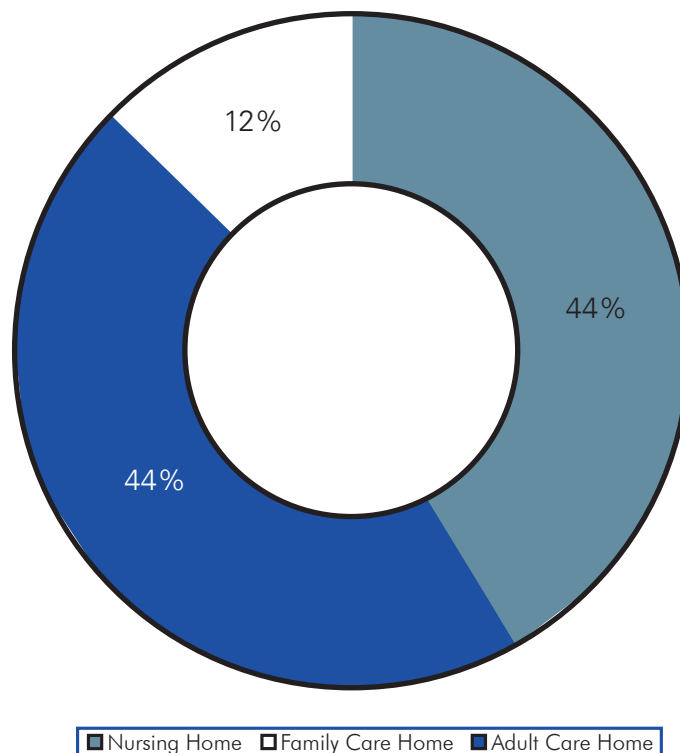
Ombudsman Program Presence in Long Term Care Facilities

Ombudsman staff and community advisory committee volunteers with the N.C. Long Term Care Ombudsman Program have a regular presence in long term care facilities. During 2011, Long Term Care Ombudsmen and community advisory committee volunteers made **2,876** nursing home visits, **2,807** adult care home visits and **764** family care home visits **for a total of 6,447** facility visits.

Ombudsman Training and Certification

Four (4) new Regional Long Term Care Ombudsmen completed the State Long Term Care Ombudsman Program's requirements for certification during 2011. The Ombudsman Program certification process includes five days of intense training with staff in the Office of the State Long Term Care Ombudsman; internships in nursing homes, adult care homes and family care homes; completion of

Facility Visits by LTC Ombudsmen and CAC Volunteers



a required reading list; and a computer lab session regarding the Ombudsman Program Documentation and Information System (ODIS).

The State Office also works with the Regional Long Term Care Ombudsman Association to match each newly certified regional ombudsman with a mentor from a pool of more experienced regional ombudsmen. The mentor is available to provide one-on-one assistance for at least one year. Finally, all regional long term care ombudsmen must attend 20 hours of quarterly training each year which is provided or approved by the Office of the State Long Term Care Ombudsman.

One (1) new Ombudsman Program Associate completed training on the Ombudsman Program Documentation and Information System and one Area Agency on Aging Director audited the Ombudsman Program certification training to better understand the Program.

In 2011, the topics for training provided by state staff on a quarterly basis for the regional ombudsmen included: Overview of the Family Caregiver Support Program; Community Resource Connections for Aging and Disabilities and Money Follows the Person; Navigating Veteran Services; VA Benefits and Special Assistance; Federal Registry Ruling

for Direct Deposits; Refresher on Ombudsman Program Documentation and Information System and Advocacy and General Information Activities; MDS and Section Q Update; Provider Perspective of LTC Ombudsman Involvement in Culture Change; LTC Enhancement Coalition and Grants; Small Household Models; Culture Change & You; Overview and Update on PACE; Complaint Intake Unit Processes and State Level Involvement with Adult Care Home Complaints; Overview of 2011 Legislation related to Adult Care Homes and Proposed Rule Changes for the Star Rating System; Reporting Crimes in a Long Term Care Facility: New Federal Requirements; QIS Demonstration; and MDS 3.0 and Culture Change.

Informal Complaint Resolution

The Long Term Care Ombudsman Program receives, investigates, and attempts to resolve complaints made by or on behalf of residents in long term care facilities. Confidentiality is the foundation of the complaint resolution process. Long Term Care Ombudsmen do not disclose the identity of any person registering complaints with the program nor the details of a complaint in any way that could identify the complainant unless written informed consent has been given for disclosure.

Empowerment of the complainant is an important component of complaint resolution. Providing information and resources that enable a person to successfully work through the long term care system is vital for the promotion of residents' rights.

The Long Term Care Ombudsman Program responded to **3,187 complaints** from **1,733 individuals** in FFY 2011. Sixty percent (60%) of those complaints were related to problems experienced in nursing homes and forty percent (40%) of complaints involved problems in adult care homes.

North Carolina Long Term Care Facilities 2011

Nursing Homes

Number of Licensed Facilities	Number of Licensed Beds
441	50,102

Adult Care Homes

Number of Licensed Facilities	Number of Licensed Beds
1,249	40,586

2011 Complaint Management Summary

A primary responsibility of the North Carolina Long Term Care Ombudsman Program is to receive, investigate and attempt to resolve grievances experienced by long term care residents using informal grievance resolution techniques, mediation and advocacy skills. A broader responsibility included in the Program's complaint management process is the protection of long term care residents' rights, health, safety, welfare, and their quality of care and life.

Regional Long Term Care Ombudsmen are certified representatives of the Office of the State Long Term Care Ombudsman and are mandated to provide direct access and timely advocacy services to both nursing home and adult care home residents. Timeliness in responding to complaints is established through a Long Term Care Ombudsman Program policy that requires a personal visit with the resident within four days of receiving complaints filed by or on behalf of a resident. The Ombudsman Program representatives met this standard 96% of the time during this past year.

When complaints are received on behalf of a resident with cognitive impairments, a regional ombudsman generally requests to meet with both the resident and his or her legal representative. As he or she is able to do so, the resident is encouraged to participate in discussions, contribute information regarding the complaint and share perspective about how to help resolve the concerns.

The Long Term Care Ombudsman Program's complaint management work focuses on responding to complaints about Residents' Rights violations such as failure to respect individual autonomy and choices, failure to deliver care and services in a manner respectful of individual dignity, lack of access to information, failure to honor dietary preferences, failure to encourage a resident to exercise his/her rights, and improper facility discharge practices. The Long Term Care Ombudsman Program representatives do not have regulatory authority, so some complaints are referred to other agencies such as the Division of Health Service Regulation for investigation when the allegations indicate that federal or state licensure regulations may have been violated. Likewise, Program representatives have no authorization to investigate complaints about abuse, neglect or exploitation occurring in a long term

care facility. When such allegations are received, regional ombudsmen provide support and assistance to residents and their families in making reports to the local county departments of social services, adult protective services unit.

The Older Americans Act mandates that every State Long Term Care Ombudsman Program maintain a confidential data collection system which provides documentation of the required Ombudsman Program activities, including complaint management information which is submitted annually to the U.S. Administration on Aging. After analysis and verification, each state's data is published on the Administration on Aging's web site: www.aoa.gov.

The Office of the State Long Term Care Ombudsman has continued to provide training sessions and individual technical assistance for regional ombudsmen in an effort to address ongoing issues related to entering data and activities into the internet-based Ombudsman Program Documentation and Information System (ODIS) efficiently and timely.

The following Ombudsman Program data provide a brief snapshot of the work accomplished by North Carolina during 2011:

- 1,733 individual cases that involved 3,187 complaints were closed.
- 1,901 nursing home and 1,286 adult care home complaints received a response from representatives of the North Carolina Long Term Care Ombudsman Program.
- 2,068 complaints (65%) were fully or partially resolved as a result of interventions by regional ombudsmen.
- 428 investigated complaints (13%) required no further action by a regional ombudsman.
- 154 complaints (5%) were withdrawn by the resident or complainant prior to completion of an investigation.
- 76 complaints (2%) could not be resolved to the satisfaction of the resident or complainant. This included 5 complaints that could not be addressed under current regulations or would require legislative action to amend current laws.
- 461 complaints (15%) were referred to other agencies, and either were not substantiated or a final disposition could not be obtained.

During the year 2011, total complaints received increased by 13% or 367 complaints. Current trends noted as a result of analyzing the complaint data include:

- Resident care complaints (769) increased by 14% from last year's total of 675, across 12 specific complaint codes including: issues regarding medication administration, accidents, inadequate personal hygiene and unattended resident symptoms.
- The Quality of Life section within the federal complaint reporting tool (Dietary, Environment, Activities and Social Services) demonstrated the most significant increase in complaints this year. There were 605 complaints (31%) compared to 463 complaints (15%) for the same categories in 2010.
- There was also a 13% increase in complaints (332) regarding inappropriate facility discharge procedures including complaints that addressed improper notices of discharge, failures in planning a safe discharge to another location, or not following other procedures required by federal or state law.

The charts on pages 32 indicate a 20% increase in nursing home complaints about abuse, financial exploitation and gross neglect of residents. During the same period, similar adult care home complaints have remained generally the same.

One positive trend, mentioned above, is that North Carolina's Long Term Care Ombudsman Program has responded in a timely manner to complaints received either by a resident or on behalf of a resident within the 4-day window specified by the Long Term Care Ombudsman Program Policies and Procedures. Program data indicate that statewide ombudsmen initiated a response to 3,004 complaints (96% of total complaints received) within the 4-day timeframe. It is challenging to maintain such a response time while juggling many other required programmatic responsibilities such as community advisory committee training and support; development of community education events including Elder Abuse Prevention training; long term care provider technical support and training; and responding to requests for assistance from families and the public related to a myriad of long term care questions, problems and concerns.

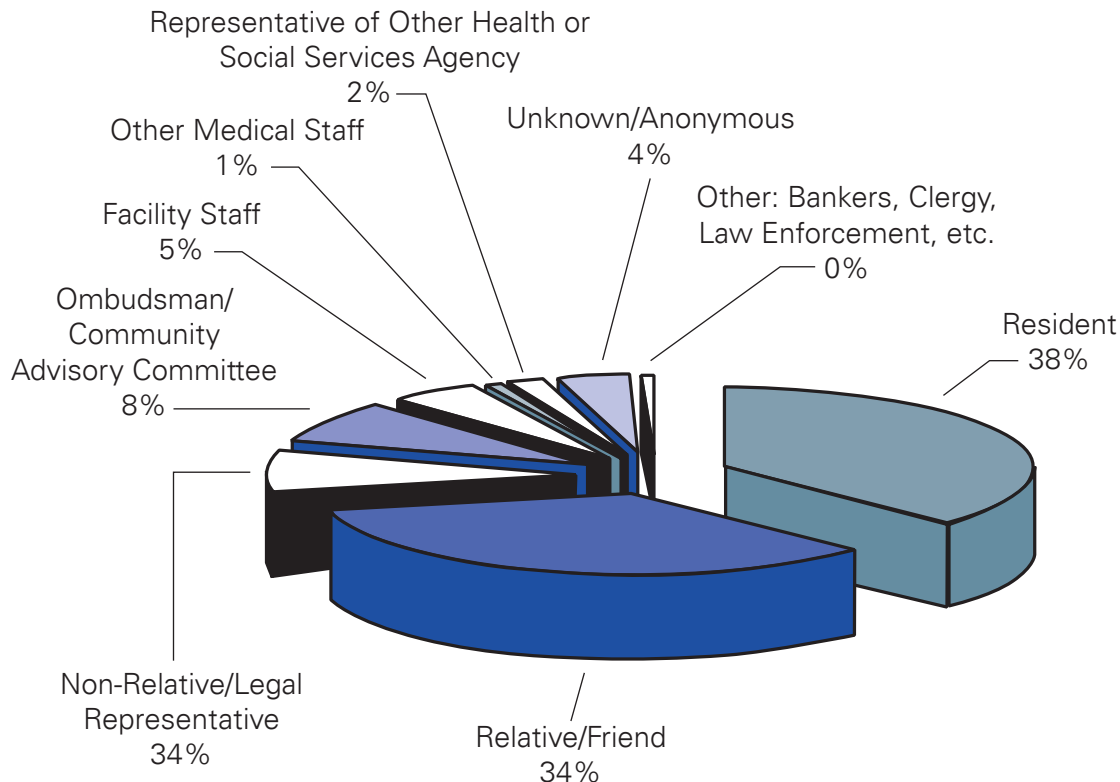
Complaint: A concern brought to, or initiated by, the ombudsman for investigation and action by or on behalf of one or more residents of a long term care facility relating to health, safety, welfare or rights of a resident.

Total FFY 2011 Complaints	1,901	1,286
Ombudsman Complaint Categories	Nursing Home Total & Percent	Adult Care Home Total & Percent
Resident Rights: The right to a dignified existence, self-determination, communication and access to persons inside or outside of the long term care facility.	827 (44%)	560 (44%)
Resident Care: Necessary care and services to maintain the highest practicable physical, mental and psychosocial well-being according to comprehensive assessments and plans of care.	550 (29%)	219 (17%)
Quality of Life: A facility must care for those who live there in a manner and an environment that promotes maintenance and enhancement of each person's quality of life.	277 (15%)	328 (26%)
Administration: A facility must be administered to enable it to use its resources and staff effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of each person who lives in the facility.	122 (6%)	79 (6%)
Not Against Facility: Complaints are against certification/ licensing agency, State Medicaid, abuse by family or guardian, family conflict, Medicare, Mental Health, APS, Social Security, VA.	125 (7%)	100 (8%)

During a presentation on smoking rights and safety policies at a nursing home, I met a rather eccentric resident with whom I later visited privately. During my conversation with him, I learned he was a gem and clay artist who spent many hours creating original jewelry from his bed. His roommate was not able to use his over-bed table so the resident used both over-bed tables together to work on his art. One day, a staff person took one of the tables away proclaiming it was a hazardous situation. While the resident enjoyed many visitors, no one had addressed his concern with staff. After gaining the resident's permission to follow up on this matter, I met with the Facility Administrator to discuss this concern. Within moments, the over-bed table was permanently replaced so that the resident could continue to pursue his passion. The resident has since sold several pieces of his handmade jewelry to staff and family members.

Article Submitted by Regional LTC Ombudsman, 2011

Source of Complaints FFY 2011



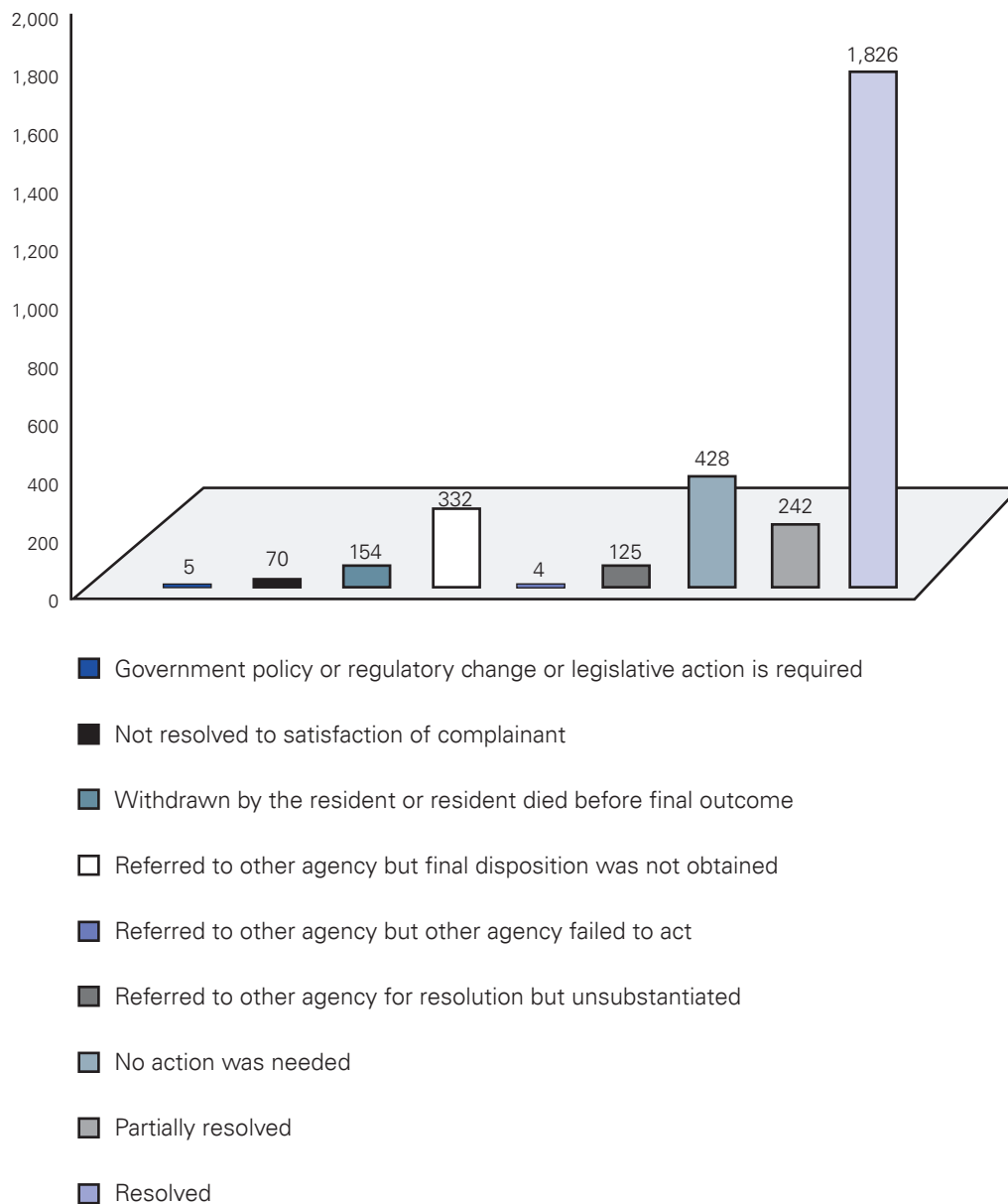
A Regional Ombudsman received a telephone call from a distraught family member who had been informed that her aunt was going to be discharged from the Adult Care Home where she had resided for the last six years. The caller explained that during the years her aunt had lived in this facility, she had paid for her care and services with her own funds. Years ago, at the time of her admission, the family had informed the facility that the resident would be able to pay privately for several years but, at some point, she would have to apply for State/County Special Assistance. The administrator at that time verbally assured the family that the resident could remain at the Adult Care Home after her private funds were exhausted. In 2011, the company that originally owned this Adult Care Home was bought by another company. The new owners implemented a new policy that stated the facility would no longer accept Special Assistance as a payer source. The residents who were currently receiving Special Assistance were “grandfathered in” under the new company’s policies.

Unfortunately, the resident in this case was several months away from depleting her private funds and was not yet eligible for Special Assistance. When the family informed the new owners of the original agreement assuring that she would be able to continue living in the facility after Special Assistance became her payer source, the family was told that this agreement was not in writing and, therefore, would not be honored.

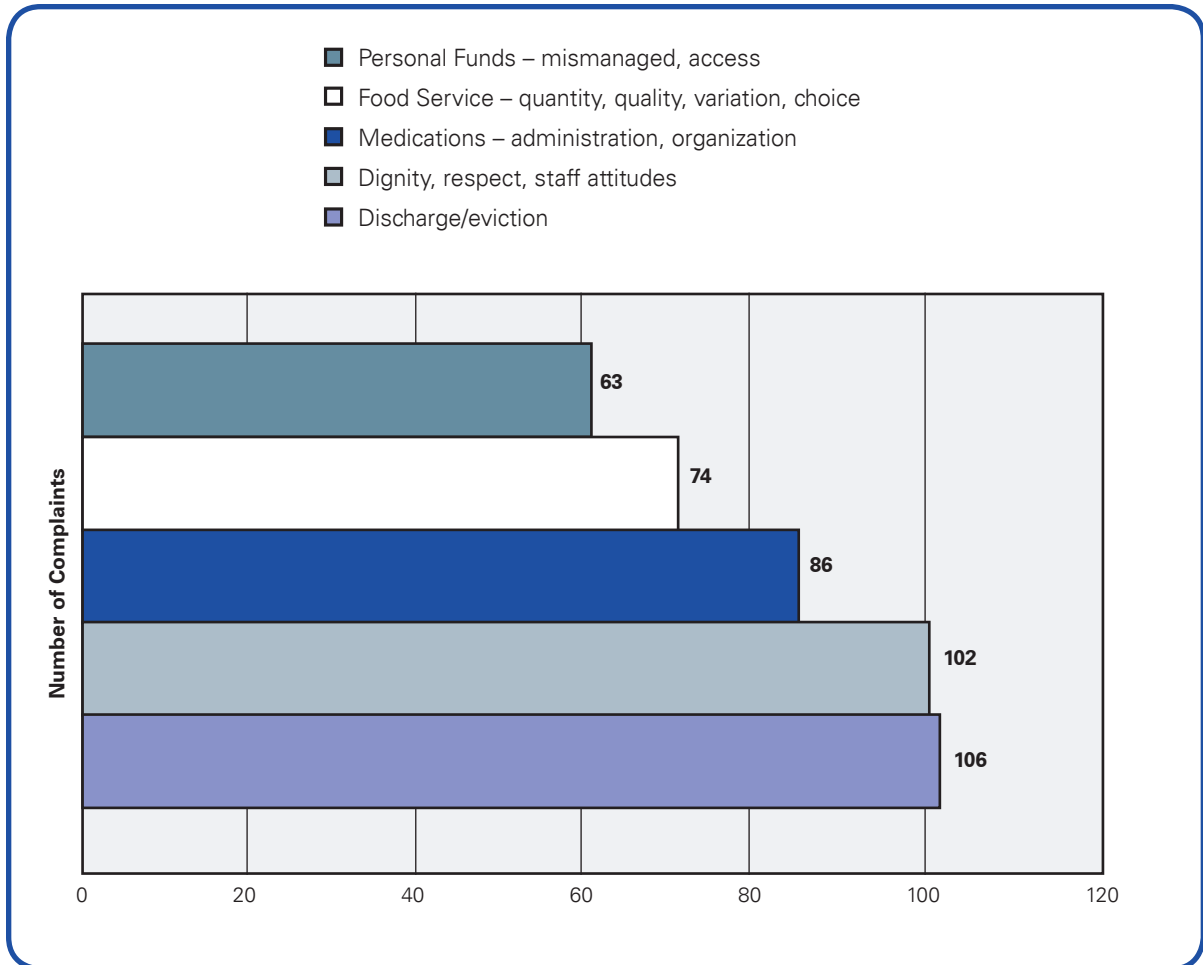
The resident was facing discharge as soon as her funds ran out. The resident was 94 years old and had a diagnosis of Alzheimer’s disease. Her family was concerned about the trauma that would result if their aunt was transferred to a different facility. At the request of the family, the Ombudsman contacted the new owners and advocated that the resident be included with those residents being “grandfathered in” and that she be allowed to continue living in the facility once she began receiving Special Assistance. After multiple telephone calls and meetings with facility management, the corporate office issued a letter stating that they recognized the hardship that a move would cause to this resident and they would allow her to remain in her home.

Article Submitted by Regional LTC Ombudsman, 2011

Disposition of Adult Care Home and Nursing Home Complaints FFY 2011



Top 5 Individual Complaints for Adult Care Homes FFY 2011



During her regular visits to an adult care home, a Regional Ombudsman frequently visited with a resident named Jennifer. During several visits with Jennifer, the Ombudsman continued to provide her with information about her rights and talk with her about the personal challenges she had in dealing with a chronic illness, adjusting to life in a long term care facility and her difficulties in developing relationships with other residents. Jennifer was a former nurse and she presently struggled with deteriorating symptoms of Huntington's disease such as a profoundly unsteady gait, uncontrollable jerking bodily movements, verbal outbursts and increasing periods of persistent moodiness. Speech was exceedingly difficult for Jennifer as she attempted conversation with others. The Ombudsman also learned that Jennifer had a long history of alcohol dependency which created yet another challenge for her.

One Monday morning, the Regional Ombudsman received a telephone call from Jennifer, who shared that facility staff had just told her she had to leave the facility that day, and she wanted to know if she had any rights in this situation. The Regional Ombudsman traveled to the adult care home to meet with Jennifer and learn more about the reasons given by management for Jennifer to be immediately discharged. Jennifer told the Regional Ombudsman that facility staff had told her she was a danger to other residents and accused her of being intoxicated and aggressive to others on a recent Saturday night which resulted in another resident being knocked out of her wheel chair and injured. Jennifer then told the Regional Ombudsman that she had not been using alcohol that night and that it actually was a staff member's fault that another resident fell out of her wheel chair. As the Ombudsman and resident continued to talk, the Adult Home Specialist with the county department of social services arrived in the building in response to a call she had received about this matter. Both the Regional Ombudsman and Adult Home Specialist immediately requested to speak with the administrator and learned she was not in the building. Staff located the administrator and a conference call was conducted that focused on ensuring appropriate discharge procedures were adhered to if the administrator proceeded with plans to discharge Jennifer immediately.

After the conference call, the Regional Ombudsman once again met with Jennifer to inform her about the conference with the administrator. During this private meeting, Jennifer began confiding to the Regional Ombudsman what really happened that Saturday night. She related

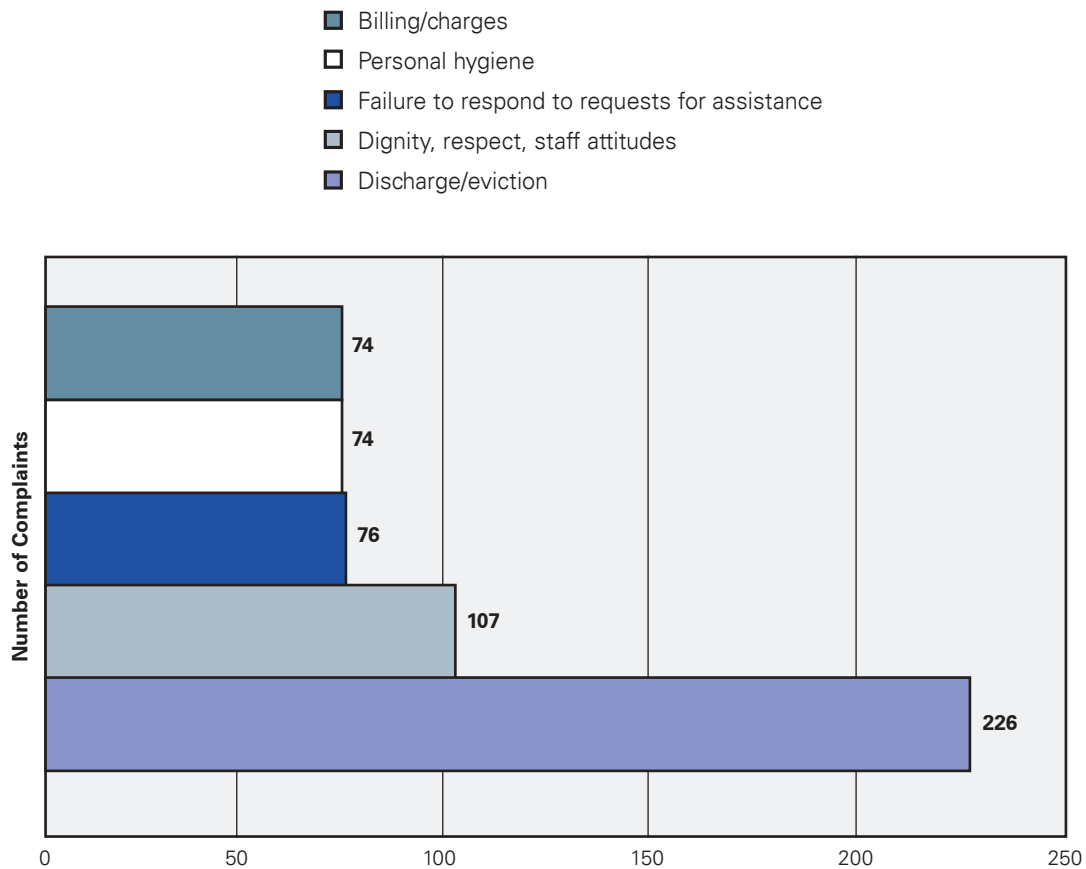
that a staff member had physically abused her by pulling her by her hair out of the dining room. While she was being half dragged by the hair and because of her unsteady gait, she said she was unable to avoid tripping over the wheelchair and knocking the resident to the floor. Jennifer told the Regional Ombudsman that when she tried to report the abuse Monday morning that the Resident Care Coordinator yelled at her "I don't want to hear it. You are out of here." Jennifer stated she asked the Resident Care Coordinator to just "look at the video tapes" from the facility surveillance cameras in the common areas of the building. This request was also refused. While Jennifer was sharing this information with the Regional Ombudsman, the Adult Home Specialist joined them. A few moments later, the Resident Care Coordinator rushed up pleading for Jennifer to "forgive me! I had no idea!" She had just watched the video tapes and now knew that Jennifer was telling the truth. Jennifer requested that the Ombudsman and Adult Home Specialist view the tapes to see first hand what had happened that Saturday night. The tape showed the staff member, with two other staff watching, drag Jennifer by her hair up out of a chair, across the dining room and directly behind the resident in the wheel chair. Jennifer banged into the chair causing the resident to fall. The staff member then dragged Jennifer by the hair out into the hall and threw her on the floor.

Appropriate authorities were notified and charges were filed on Jennifer's behalf. Further investigation using the video tapes revealed additional incidences of abuse involving another resident and Jennifer. All three staff involved were fired immediately. The Regional Ombudsman continued to visit Jennifer until a few months later when at Jennifer's request, she moved to Florida to be closer to her family.

The Regional Ombudsman has continued to advocate on Jennifer's behalf by attending the Penalty Review Committee hearing when this facility was scheduled to appear and working with the N.C. Healthcare Personnel Registry, which has since reopened their investigation related to residents' abuse allegations.

Article Submitted by Regional LTC Ombudsman, 2011

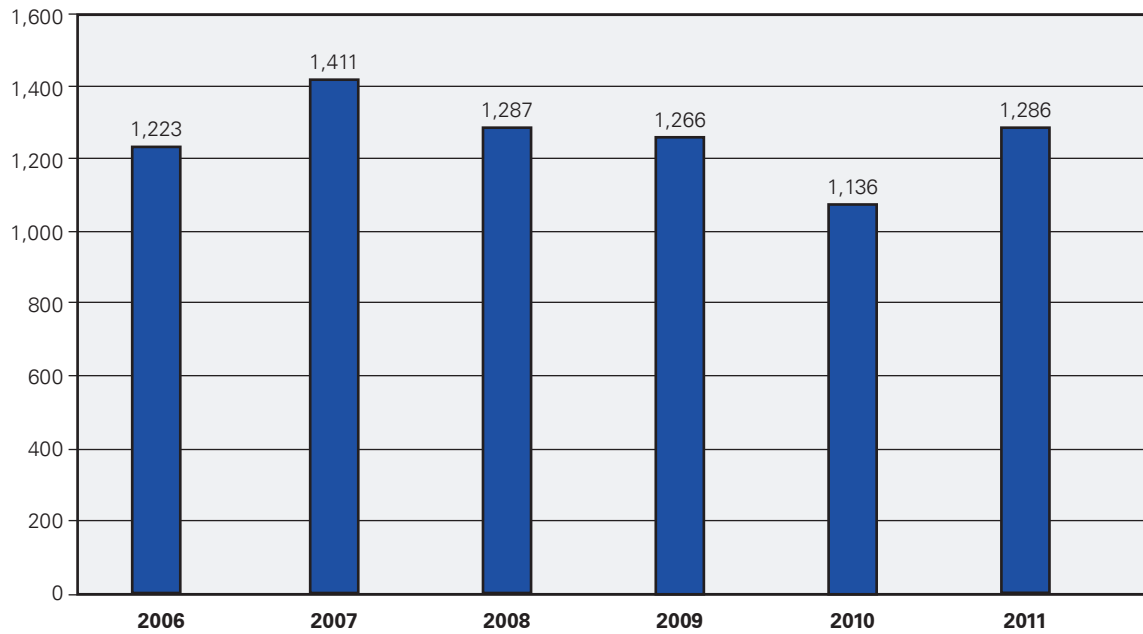
Top 5 Individual Complaints for Nursing Homes FFY 2011



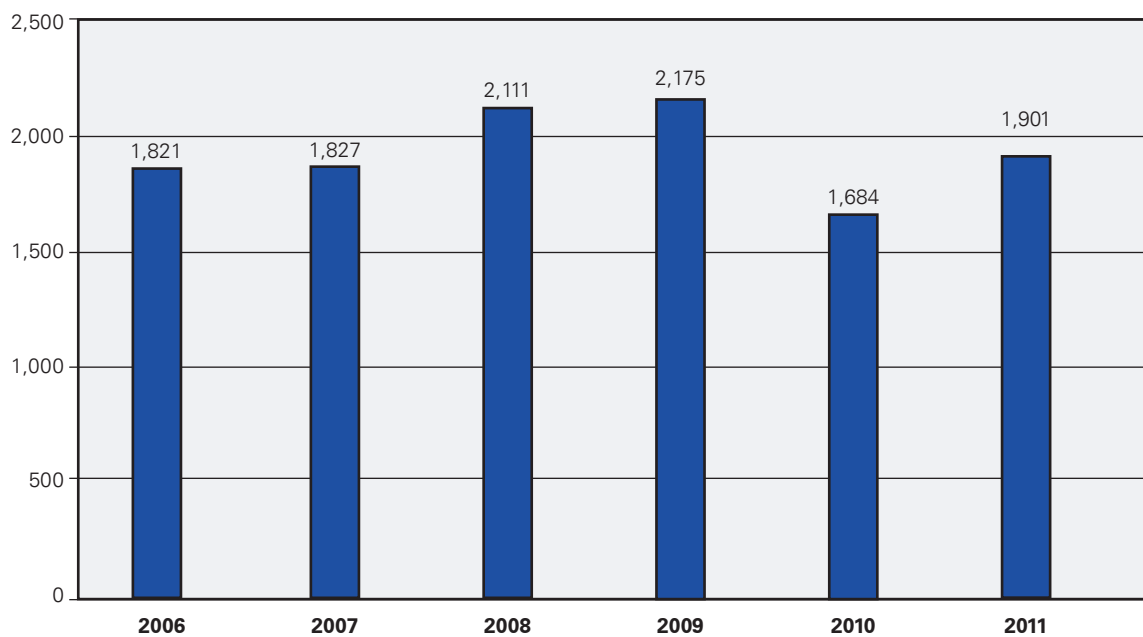
A Regional Ombudsman was contacted by the family member of a resident (Ms. T) who lived in a local nursing facility. The son was concerned because (Ms. F) the resident across the hall from his mother frequently yelled out in the late afternoon because she wanted to see her daughter and this disturbed his mother. The Ombudsman visited Ms. T and she shared her concern about the lady across the hall and gave the Ombudsman permission to talk with the nursing facility staff about her concerns. The Ombudsman met with facility staff for a discussion about the resident's concerns and offered some ideas that might help meet Ms. F's needs so that she did not need to call out. During the discussion, the facility social worker mentioned that Ms. F's daughter wanted to move her mother home with her, but her mother was on lengthy waiting lists for services and she could not afford to pay for assistance at home. The Ombudsman suggested that Ms. F might be eligible for the Money Follows the Person program and provided the social worker with information about the program. The social worker followed up by assisting Ms. F in applying for the program and a few months later Ms. F moved home with her daughter. The social worker also noted that Ms. F's yelling out decreased once she knew that she would soon be moving home with her daughter.

Article Submitted by Regional LTC Ombudsman, 2011

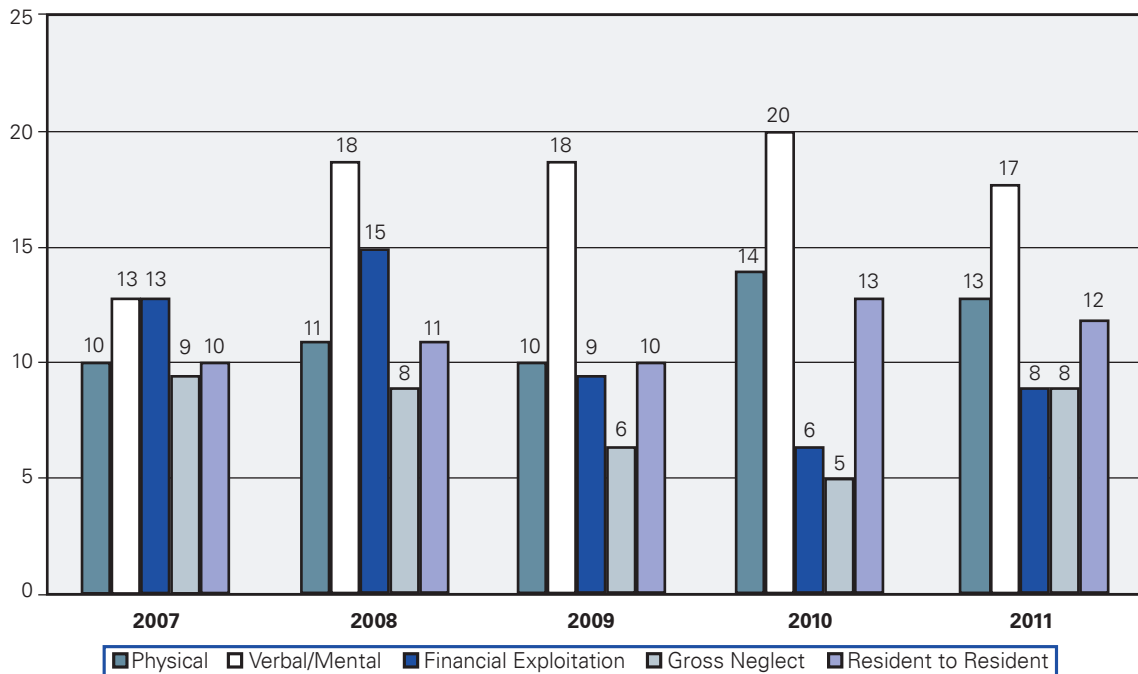
Adult Care Home Complaints FFY 2006 - FFY 2011



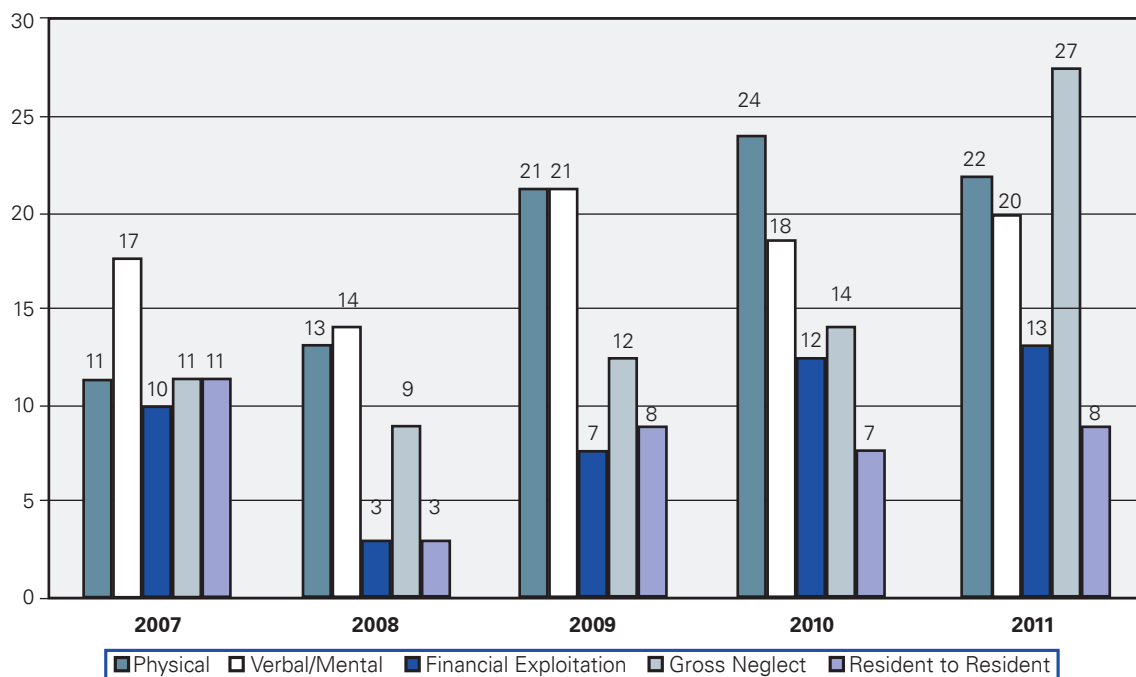
Nursing Home Complaints FFY 2006 - FFY 2011



Five Year Comparison of Abuse Complaints in Adult Care Homes



Five Year Comparison of Abuse Complaints in Nursing Homes

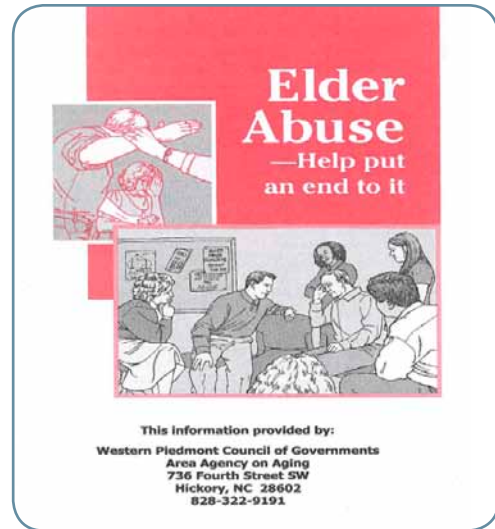


Elder Abuse Awareness Activities by N.C. LTC Ombudsmen

**No Excuse for Elder Abuse
2011**



LTC Ombudsman Program Community Awareness and Elder Abuse Initiatives 2011



Appendices





Appendix A

North Carolina Adult Care Home Bill of Rights (Condensed Version)

Every resident shall have the following rights:

1. To be treated with respect, consideration, dignity and full recognition of his or her individuality and right to privacy.
2. To receive care and services which are adequate, appropriate and in compliance with relevant federal and state laws and rules and regulations.
3. To receive upon admission and during his or her stay a written statement of the services provided by the facility and the charges for these services.
4. To be free of mental and physical abuse, neglect and exploitation.
5. Except in emergencies, to be free from chemical and physical restraint unless authorized for a specified period of time by a physician according to clear and indicated medical need.
6. To have his or her personal and medical record kept confidential and not disclosed without the written consent of the individual or guardian, which consent shall specify to whom disclosure may be made except as required by applicable state or federal statute or regulation or by third party contract.
7. To receive a reasonable response to his or her requests from the facility administrator and staff.
8. To associate and communicate privately and without restriction with people and groups of his or her own choice on his or her own initiative at any reasonable hour.
9. To have access at any reasonable hour to a telephone where he or she may speak privately.
10. To send and receive mail promptly and unopened, unless the resident requests that someone open and read mail, and to have access at his or her expense to writing instruments, stationery and postage.
11. To be encouraged to exercise his or her rights as a resident and citizen, and to be permitted to make complaints and suggestions without fear of coercion or retaliation.
12. To have and use his or her own possessions where reasonable and have an accessible lockable space provided for security of personal valuables. This space shall be accessible only to the residents and the administrator or supervisor in charge.
13. To manage his or her personal needs funds unless such authority has been delegated to another. If authority to manage personal needs funds has been delegated to the facility, the resident has the right to examine the account at any time.
14. To be notified when the facility is issued a provisional license by the North Carolina Department of Health and Human Services and the basis on which the provisional license was issued. The resident's responsible family member or guardian shall also be notified.
15. To have freedom to participate by choice in accessible community activities and in social, political, medical and religious resources and to have freedom to refuse such participation.
16. To receive upon admission to the facility a copy of this section.
17. To not be transferred or discharged from a facility except for medical reasons, their own or other residents' welfare, or nonpayment. Except in cases of immediate jeopardy to health or safety, residents shall be given at least 30 days advance notice of the transfer or discharge and their right to appeal.

The Ombudsman is an advocate for those who live in long term care facilities. For more information on resident rights, call the Regional Long Term Care Ombudsman.

Your Regional Ombudsman is: _____ Telephone: _____

North Carolina Bill of Rights for Nursing Home Residents (Condensed Version)

Every resident shall have the following rights:

1. To be treated with consideration, respect and full recognition of personal dignity and individuality.
2. To receive care, treatment, and services that are adequate and appropriate, and in compliance with relevant federal and State rules.
3. To receive at the time of admission and during stay, a written statement of services provided by the facility and of related charges. Charges for services not covered under Medicare and Medicaid shall be specified.
4. To have on file physician's orders with proposed schedule of medical treatment. Written, signed evidence of prior informed consent to participation in experimental research shall be in patient's file.
5. To receive respect and privacy in his medical care program. All personal and medical records are confidential.
6. To be free of mental and physical abuse. To be free of chemical and physical restraint unless authorized for a specified period of time by a physician according to clear and indicated medical records.
7. To receive from the administrator or staff of the facility a reasonable response to all requests.
8. To receive visitors or have access to privacy in phone use at any reasonable hour. To send and receive mail promptly and unopened, with access to writing materials.
9. To manage his/her own financial affairs unless other legal arrangements have been so ordered.
10. To have privacy in visits by the patient's spouse.
11. To enjoy privacy in his/her own room.
12. To present grievances and recommend changes in policies and services without fear of reprisal, restraint, interference, coercion or discrimination.
13. To not be required to perform services for the facility without resident's consent and written approval of the attending physician.
14. To retain, to secure storage for, and to use his personal clothing and possessions, where reasonable.
15. To not be transferred or discharged from a facility except for medical, financial, or their own or other patient's welfare. Any such transfer shall require at least five days' notice, unless the attending physician orders immediate transfer, which shall be documented in the patient's medical record.
16. To be notified when the facility's license is revoked or made provisional. The responsible party or guardian must be notified, also.

The Ombudsman is an advocate for those who live in long term care facilities. For more information on resident rights, call the Regional Long Term Care Ombudsman.

Your Regional Ombudsman is: _____ Telephone: _____

Appendix B

Data Tables for N.C. Ombudsman Reporting Tool

Part I - Cases, Complainants and Complaints

D. Types of Complaints, by Type of Facility

Below and on the following pages provide the total number of complaints for each specific complaint category, for nursing facilities and board and care or similar type of adult care facility. The first four major headings are for complaints involving action or inaction by staff or management of the facility. The last major heading is for complaints against others outside the facility. See Instructions for additional clarification and definitions of types of facilities and selected complaint categories.

Residents' Rights

A. Abuse, Gross Neglect, Exploitation

1. Abuse, physical (including corporal punishment)
2. Abuse, sexual
3. Abuse, verbal/psychological (including punishment, seclusion)
4. Financial exploitation (use categories in section E for less severe financial complaints)
5. Gross neglect (use categories under Care, Sections F & G for non-willful forms of neglect)
6. Resident-to-resident physical or sexual abuse
7. Not Used

Nursing Facility

B&C, ALF, RCF, etc.

13	12
9	1
20	17
13	8
27	8
8	12

B. Access to Information by Resident or Resident's Representative

8. Access to own records
9. Access by or to ombudsman/visitors
10. Access to facility survey/staffing reports/license
11. Information regarding advance directive
12. Information regarding medical condition, treatment and any changes
13. Information regarding rights, benefits, services, the resident's right to complain
14. Information communicated in understandable language
15. Not Used

11	4
7	9
0	1
0	0
23	12
14	8
2	0

C. Admission, Transfer, Discharge, Eviction

16. Admission contract and/or procedure
17. Appeal process - absent, not followed
18. Bed hold - written notice, refusal to readmit
19. Discharge/eviction - planning, notice, procedure, implementation, inc. abandonment
20. Discrimination in admission due to condition, disability
21. Discrimination in admission due to Medicaid status
22. Room assignment/room change/intrafacility transfer
23. Not Used

8	2
0	0
14	1
226	106
4	2
4	2
24	18

D. Autonomy, Choice, Preference, Exercise of Rights, Privacy

24. Choose personal physician, pharmacy/hospice/other health care provider
25. Confinement in facility against will (illegally)
26. Dignity, respect - staff attitudes
27. Exercise preference/choice and/or civil/religious rights, individual's right to smoke
28. Exercise right to refuse care/treatment
29. Language barrier in daily routine
30. Participate in care planning by resident and/or designated surrogate

3	0
16	12
107	102
51	19
7	4
0	0
15	0

31. Privacy - telephone, visitors, couples, mail	19	31
32. Privacy in treatment, confidentiality	11	12
33. Response to complaints	36	17
34. Reprisal, retaliation	12	7
35. Not Used		
E. Financial, Property (Except for Financial Exploitation)		
36. Billing/charges - notice, approval, questionable, accounting wrong or denied (includes overcharge of private pay residents)	74	40
37. Personal funds - mismanaged, access/information denied, deposits and other money not returned (report criminal-level misuse of personal funds under A.4)	14	63
38. Personal property lost, stolen, used by others, destroyed, withheld from resident	35	30
39. Not Used		
Resident Care		
F. Care		
40. Accidental or injury of unknown origin, falls, improper handling	32	7
41. Failure to respond to requests for assistance	76	11
42. Care plan/resident assessment - inadequate, failure to follow plan or physician orders (put lack of resident/surrogate involvement under D.30)	62	26
43. Contracture	1	0
44. Medications - administration, organization	59	86
45. Personal hygiene (includes nail care & oral hygiene) and adequacy of dressing & grooming	74	26
46. Physician services, including podiatrist	24	7
47. Pressure sores, not turned	27	2
48. Symptoms unattended, including pain, pain not managed, no notice to others of changes in condition	45	18
49. Toileting, incontinent care	38	1
50. Tubes - neglect of catheter, gastric, NG tube (use D.28 for inappropriate/forced use)	5	1
51. Wandering, failure to accommodate/monitor exit seeking behavior	4	3
52. Not Used		
G. Rehabilitation or Maintenance of Function		
53. Assistive devices or equipment	38	14
54. Bowel and bladder training	7	0
55. Dental services	12	3
56. Mental health, psychosocial services	7	5
57. Range of motion/ambulation	9	1
58. Therapies - physical, occupational, speech	14	2
59. Vision and hearing	6	3
60. Not Used		
H. Restraints - Chemical and Physical		
61. Physical restraint - assessment, use, monitoring	3	1
62. Psychoactive drugs - assessment, use, evaluation	7	2
63. Not Used		

Quality of Life**I. Activities and Social Services**

64. Activities - choice and appropriateness	15	25
65. Community interaction, transportation	7	8
66. Resident conflict, including roommates	25	25
67. Social services - availability/appropriateness/ (use G.56 for mental health, psychosocial counseling/service)	11	1
68. Not Used		

J. Dietary

69. Assistance in eating or assistive devices	16	3
70. Fluid availability/hydration	23	11
71. Food service - quantity, quality, variation, choice, condiments, utensils, menu	31	74
72. Snacks, time span between meals, late/missed meals	14	18
73. Temperature	16	7
74. Therapeutic diet	7	6
75. Weight loss due to inadequate nutrition	12	7
76. Not Used		

K. Environment

77. Air/environment: temperature and quality (heating, cooling, ventilation, water, noise)	4	16
78. Cleanliness, pests, general housekeeping	20	40
79. Equipment/building - disrepair, hazard, poor lighting, fire safety, not secure	21	35
80. Furnishings, storage for residents	8	12
81. Infection control	8	4
82. Laundry - lost, condition	13	13
83. Odors	14	9
84. Space for activities, dining	0	0
85. Supplies and linens	11	14
86. Americans with Disabilities Act (ADA) accessibility	1	0

Administration**L. Policies, Procedures, Attitudes, Resources (See other complaint headings, of above, for policies on advance directives, due process, billing, management residents' funds)**

87. Abuse investigation/reporting, including failure to report	0	3
88. Administrator(s) unresponsive, unavailable	5	11
89. Grievance procedure (use C for transfer, discharge appeals)	3	0
90. Inappropriate or illegal policies, practices, record-keeping	6	3
91. Insufficient funds to operate	0	0
92. Operator inadequately trained	3	1
93. Offering inappropriate level of care (for B&C/similar)	0	5
94. Resident or family council/committee interfered with, not supported	1	0
95. Not Used		

M. Staffing

96. Communication, language barrier (use D.29 if problem involves resident inability to communicate)	3	2
--	---	---

97. Shortage of staff	35	19
98. Staff training	9	7
99. Staff turn-over, over-use of nursing pools	5	1
100. Staff unresponsive, unavailable	43	18
101. Supervision	7	7
102. Eating Assistants	2	2
Not Against Facility		
N. Certification/Licensing Agency		
103. Access to information (including survey)	2	1
104. Complaint, response to	6	6
105. Decertification/closure	1	1
106. Sanction, including Intermediate	0	0
107. Survey process	1	0
108. Survey process - Ombudsman participation	0	0
109. Transfer or eviction hearing	22	5
110. Not Used		
O. State Medicaid Agency		
111. Access to information, application	2	0
112. Denial of eligibility	1	1
113. Non-covered services	1	1
114. Personal Needs Allowance	3	3
115. Services	7	6
116. Not Used		
P. System/Others		
117. Abuse/neglect/abandonment by family member/friend/guardian or, while on visit out of facility, any other person	5	1
118. Bed shortage - placement	2	0
119. Facilities operating without a license	0	2
120. Family conflict; interference	28	7
121. Financial exploitation or neglect by family or other not affiliated with facility	5	6
122. Legal - guardianship, conservatorship, power of attorney, wills	17	19
123. Medicare	1	5
124. Mental health, developmental disabilities, including PASRR	0	1
125. Problems with resident's physician/assistant	2	1
126. Protective Service Agency	0	1
127. SSA, SSI, VA, Other Benefits/Agencies	5	13
128. Request for less restrictive placement	14	20
Total, categories A through P	1,901	1,286
Q. Complaints About Services in Settings Other Than Long-Term Care Facilities or By Outside Provider in Long-Term Care Facilities (see instructions)		
129. Home care	0	
130. Hospital or hospice	0	
131. Public or other congregate housing not providing personal care	0	
132. Services from outside provider (see instructions)	0	
133. Not Used		
Total, Heading Q.	0	
Total Complaints*	3,187	

Appendix C

Title VII, Chapter 2, Section 712

2000 Amendments to the Older Americans Act

SEC 712 (42 U.S.C. 3058g) STATE LONG TERM CARE OMBUDSMAN PROGRAM.

(a) Establishment.—

- (1) In general. In order to be eligible to receive an allotment under section 703 from funds appropriated under section *702 and made available to carry out this chapter*, a State agency shall, in accordance with this section
 - (A) establish and operate an Office of the State Long Term Care Ombudsman; and
 - (B) carry out through the Office a State Long Term Care Ombudsman program.
- (2) Ombudsman. The Office shall be headed by an individual, to be known as the State Long Term Care Ombudsman, who shall be selected from among individuals with expertise and experience in the fields of long term care and advocacy.
- (3) Functions. The Ombudsman shall serve on a full time basis, and shall, personally or through representatives of the Office—
 - (A) identify, investigate, and resolve complaints that-
 - (i) are made by, or on behalf of, residents and
 - (ii) relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents (including the welfare and rights of the residents with respect to the appointment and activities of guardians and representative payees), of
 - (I) providers, or representatives of providers, of long-term care services;
 - (II) public agencies; or
 - (III) health and social service agencies;
 - (B) provide services to assist the residents in protecting the health, safety, welfare, and rights of the residents;
 - (C) inform the residents about means of obtaining services provided by providers or agencies described in subparagraph (A)(ii) or services described in subparagraph (B);

(D) ensure that the residents have regular and timely access to the services provided through the Office and that the residents and complainants receive timely responses from representatives of the Office to complaints;

(E) represent the interests of the residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(F) provide administrative and technical assistance to entities designated under paragraph (5) to assist the entities in participating in the program;

(G) (i) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to the adequacy of long term care facilities and services in the State;

(ii) recommend any changes in such laws, regulations, policies, and actions as the Office determines to be appropriate; and

(iii) facilitate public comment on the laws, regulations, policies, and actions;

(H) (i) provide for training representatives of the Office;

(ii) promote the development of citizen organizations, to participate in the program; and

(iii) provide technical support for the development of resident and family councils to protect the well being and rights of residents; and

(I) carry out such other activities as the Assistant Secretary determines to be appropriate

(4) Contracts and arrangements.--

(A) In general. Except as provided in subparagraph (B), the State agency may establish and operate the Office, and carry out the program, directly, or by contract or other arrangement with any public agency or nonprofit private organization.

(B) Licensing and certification organizations; associations. The State agency may not enter into the contract or other arrangement described in subparagraph (A) with

(i) an agency or organization that is responsible for licensing or certifying long term care services in the State; or

- (ii) an association (or an affiliate of such an association) of long term care facilities, or of any other residential facilities for older individuals.
- (5) Designation of local ombudsman entities and representatives.--
- (A) Designation.--In carrying out the duties of the Office, the Ombudsman may designate an entity as a local Ombudsman entity, and may designate an employee or volunteer to represent the entity.
 - (B) Duties.--An individual so designated shall, in accordance with the policies and procedures established by the Office and the State agency
 - (i) provide services to protect the health, safety, welfare and rights of residents;
 - (ii) ensure that residents in the service area of the entity have regular, timely access to representatives of the program and timely responses to complaints and requests for assistance;
 - (iii) identify, investigate, and resolve complaints made by or on behalf of residents that relate to action, inaction, or decisions, that may adversely affect the health, safety, welfare, or rights of the residents;
 - (iv) represent the interests of residents before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;
 - (v)
 - (I) review, and if necessary, comment on any existing and proposed laws, regulations, and other government policies and actions, that pertain to the rights and well-being of residents; and
 - (II) facilitate the ability of the public to comment on the laws, regulation, policies, and actions;
 - (vi) support the development of resident and family councils; and
 - (vii) carry out other activities that the Ombudsman determines to be appropriate.
- (C) Eligibility for designation.--Entities eligible to be designated as local Ombudsman entities, and individuals eligible to be designated as representatives of such entities, shall

- (i) have demonstrated capability to carry out the responsibilities of the Office;
- (ii) be free of conflicts of interest and *not stand to gain financially through an action or potential action brought on behalf of individuals the Ombudsman serves*;
- (iii) in the case of the entities, be public or nonprofit private entities; and
- (iv) meet such additional requirements as the Ombudsman may specify.

(D) Policies and procedures.--

- (i) In general. The State agency shall establish, in accordance with the Office, policies and procedures for monitoring local Ombudsman entities designated to carry out the duties of the Office.
- (ii) Policies. In a case in which the entities are grantees, or the representatives are employees, of area agencies on aging, the State agency shall develop the policies in consultation with the area agencies on aging. The policies shall provide for participation and comment by the agencies and for resolution of concerns with respect to case activity.
- (iii) Confidentiality and disclosure. The State agency shall develop the policies and procedures in accordance with all provisions of this subtitle regarding confidentiality and conflict of interest.

(b) Procedures for Access.--

- (1) In General. The State shall ensure that representatives of the Office shall have--

(A) access to long term care facilities and residents;

(B) (i) appropriate access to review the medical and social records of a resident, if

(I) the representative has the permission of the resident, or the legal representative of the resident; or

(II) the resident is unable to consent to the review and has no legal representative; or

(ii) access to the records as is necessary to investigate a complaint if

(I) a legal guardian of the resident refuses to give the permission;

- (II) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident; and
 - (III) the representative obtains the approval of the Ombudsman;
 - (C) access to the administrative records, policies, and documents, to which the residents have, or the general public has access, of long term care facilities; and
 - (D) access to and, on request, copies of all licensing and certification records maintained by the State with respect to long term care facilities.
- (2) Procedures.--The State agency shall establish procedures to ensure the access described in paragraph (1).
- (c) Reporting System.--The State agency shall establish a statewide uniform reporting system to
- (1) collect and analyze data relating to complaints and conditions in long term care facilities and to residents for the purpose of identifying and resolving significant problems; and
 - (2) submit the data, on a regular basis, to
 - (A) the agency of the State responsible for licensing or certifying long term care facilities in the State;
 - (B) other State and Federal entities that the Ombudsman determines to be appropriate;
 - (C) the Assistant Secretary; and
 - (D) the National Ombudsman Resource Center established in section 202(a)(21).
- (d) Disclosure.--
- (1) In general.--The State agency shall establish procedures for the disclosure by the Ombudsman or local Ombudsman entities of files maintained by the program, including records described in subsection (b)(1) or (c).
 - (2) Identity of complainant or resident.--The procedures described in paragraph (1) shall
 - (A) provide that, subject to subparagraph (B), the files and records described in paragraph (1) may be disclosed only at the discretion of the Ombudsman (or the person designated by the Ombudsman to disclose the files and records); and

- (B) prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files or records unless
 - (i) the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing;
 - (ii) (I) the complainant or resident gives consent orally; and
(II) the consent is documented contemporaneously in a writing made by a representative of the Office in accordance with such requirements as the State agency shall establish; or
 - (iii) the disclosure is required by court order.
- (e) Consultation.—In planning and operating the program, the State agency shall consider the views of area agencies on aging, older individuals, and providers of long term care.

(f) Conflict of Interest.—The State agency shall—

- (1) Ensure that no individual, or member of the immediate family of an individual, involved in the designation of the Ombudsman (whether by appointment or otherwise) or the designation of an entity designated under subsection (a)(5), is subject to a conflict of interest;**
- (2) ensure that no officer or employee of the Office, representative of a local Ombudsman entity, or member of the immediate family of the officer, employee, or representative, is subject to a conflict of interest;
- (3) ensure that the Ombudsman—
 - (A) does not have a direct involvement in the licensing or certification of a long term care facility or of a provider of a long term care service;
 - (B) does not have an ownership or investment interest (represented by equity, debt, or other financial relationship) in a long term care facility or a long term care service;
 - (C) is not employed by, or participating in the management of, a long term care facility; and
 - (D) does not receive, or have the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long term care facility; and

- (4) establish, and specify in writing, mechanisms to identify and remove conflicts of interest referred to in paragraphs (1) and (2), and to identify and eliminate the relationships described in subparagraphs (A) through (D) of paragraph (3), including such mechanisms as--
 - (A) the methods by which the State agency will examine individuals, and immediate family members, to identify the conflicts; and
 - (B) the actions that the State agency will require the individuals and such family members to take to remove such conflicts.
- (g) Legal Counsel.--The State agency shall ensure that--
 - (1) (A) adequate legal counsel is available, and is able, without conflict of interest, to
 - (i) provide advice and consultation needed to protect the health, safety, welfare, and rights of residents; and
 - (ii) assist the Ombudsman and representatives of the Office in the performance of the official duties of the Ombudsman and representatives; and
 - (B) legal representation is provided to any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the Ombudsman or such a representative; and
 - (2) the Office pursues administrative, legal, and other appropriate remedies on behalf of residents.
- (h) Administration.--The State agency shall require the Office to--
 - (1) prepare an annual report--
 - (A) describing the activities carried out by the Office in the year for which the report is prepared;
 - (B) containing and analyzing the data collected under subsection (c);
 - (C) evaluating the problems experienced by, and the complaints made by or on behalf of, residents;
 - (D) containing recommendations for
 - (i) improving quality of the care and life of the residents; and
 - (ii) protecting the health, safety, welfare, and rights of the residents;

- (E) (i) analyzing the success of the program including success in providing services to residents of board (and care facilities and other similar adult care facilities; and
- (ii) identifying barriers that prevent the optimal operation of the program; and
- (F) providing policy, regulatory, and legislative recommendations to solve identified problems, to resolve the complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers;

(2) analyze, comment on, and monitor the development and implementation of Federal, State, and local laws, regulations, and other government policies and actions that pertain to long-term care facilities and services, and to the health, safety, welfare, and rights of residents, in the State, and recommend any changes in such laws, regulation, and policies as the Office determines to be appropriate;

- (3) (A) provide such information as the Office determines to be necessary to public and private agencies, legislators, and other persons, regarding–
 - (i) the problems and concerns of older individuals residing in long term care facilities; and
 - (ii) recommendations related to the problems and concerns; and
- (B) make available to the public, and submit to the Assistant Secretary, the chief executive officer of the State, the State legislature, the State agency responsible for licensing or certifying long term care facilities, and other appropriate governmental entities, each report prepared under paragraph (1);
- (4) *strengthen and update* procedures for the training of the representatives of the Office, including unpaid volunteers, based on model standards established by the Director of the Office of Long-Term Care Ombudsman Programs, in consultation with representatives of citizen groups, long term care providers, and the Office, that–
 - (A) specify a minimum number of hours of initial training;
 - (B) specify the content of the training, including training relating to–
 - (i) Federal, State, and local laws, regulations, and policies, with respect to long term care facilities in the State;

- (ii) investigative techniques; and
 - (iii) such other matters as the State determines to be appropriate; and
 - (C) specify an annual number of hours of in service training for all designated representatives;
 - (5) prohibit any representative of the Office (other than the Ombudsman) from carrying out any activity described in subparagraphs (A) through (G) of subsection (a)(3) unless the representative--
 - (A) has received the training required under paragraph (4); and
 - (B) has been approved by the Ombudsman as qualified to carry out the activity on behalf of the Office;
 - (6) coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses established under--
 - (A) part A of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001 et seq.); and
 - (B) the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 et seq.);
 - (7) coordinate, to the greatest extent possible, ombudsman services with legal assistance provided under section 306(a)(2)(C), through adoption of memoranda of understanding and other means;
 - (8) *coordinate services with State and local law enforcement agencies and courts of competent jurisdiction; and*
 - (9) permit any local Ombudsman entity to carry out the responsibilities described in paragraph (1), (2), (3), (6), or (7).
- (i) Liability.--The State shall ensure that no representative of the Office will be liable under State law for the good faith performance of official duties.

(j) Noninterference.--The State shall--

- (1) ensure that willful interference with representatives of the Office in the performance of the official duties of the representatives (as defined by the Assistant Secretary) shall be unlawful;
- (2) prohibit retaliation and reprisals by a long term care facility or other entity with respect to any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of, the Office; and
- (3) provide for appropriate sanctions with respect to the interference, retaliation, and reprisals.

Appendix D

Long-Term Care Ombudsman Program.

Part 14D. North Carolina State Long-term Care Ombudsman Program

§ 143B-181.15. Long-Term Care Ombudsman Program/Office; policy.

It is the intent of the General Assembly to protect and improve the quality of care and life for residents through the establishment of a program to assist residents and providers in the resolution of complaints or common concerns, to promote community involvement and volunteerism in long-term care facilities, and to educate the public about the long-term care system.

The General Assembly finds that a significant number of older citizens of this State reside in long-term care facilities and are dependent on others to provide their care. It is the further intent of the General Assembly that the Department of Health and Human Services, within available resources and pursuant to its duties under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., ensure that the quality of care and life for these residents is maintained, that necessary reports are made, and that, when necessary, corrective action is taken at the Department level. (1989, c. 403, s. 1; 1995, c. 254, s. 1; 1997-443, s. 11A.118 (a).)

§ 143B-181.16. Long-Term Care Ombudsman Program/Office; definition.

Unless the content clearly requires otherwise, as used in this Article:

- (1) "Long-term care facility" means any skilled nursing facility and intermediate care facility as defined in G.S. 131A-3(4) or any adult care home as defined in G.S. 131D-20(2).
- (2) "Resident" means any person who is receiving treatment or care in any long-term care facility.
- (3) "State Ombudsman" means the State Ombudsman as defined by the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., who carries out the duties and functions established by this Article.
- (4) "Regional Ombudsman" means a person employed by an Area Agency on Aging to carry out the functions of the Regional Ombudsman Office established by this Article. (1989, c. 403, s. 1; 1995, c. 254, s. 2; c. 535, s. 35.)

§ 143B-181.17. Office of State Long-Term Care Ombudsman Program/Office; establishment.

The Secretary of Department of Health and Human Services shall establish and maintain the Office of State Long-Term Ombudsman in the Division of Aging. The Office shall carry out the functions and duties required by the Older Americans Act of 1965, as amended. This Office shall be headed by a State Ombudsman who is a person qualified by training and with experience in geriatrics and long-term care. The Attorney General shall provide legal staff and advice to this Office. (1989, c. 403, s. 1; 1997-443, s. 11A.118 (a).)

§ 143B-181.18. Office of State Long-Term Care Ombudsman Program/State Ombudsman duties.

The State Ombudsman shall:

- (1) Promote community involvement with long-term care providers and residents of long-term care facilities and serve as liaison between residents, residents' families, facility personnel, and facility administration;
- (2) Supervise the Long-Term Care Program pursuant to rules adopted by the Secretary of the Department of Health and Human Services pursuant to G.S. 143B-10;
- (3) Certify regional ombudsmen. Certification requirements shall include an internship, training in the aging process, complaint resolution, long-term care issues, mediation techniques, recruitment and training of volunteers, and relevant federal, State, and local laws, policies, and standards;
- (4) Attempt to resolve complaints made by or on behalf individuals who are residents of long-term care facilities, which complaints relate to administrative action that may adversely affect the health, safety, or welfare of residents;
- (5) Provide training and technical assistance to regional ombudsmen;
- (6) Establish procedures for appropriate access by regional ombudsmen to long-term care facilities and residents' records including procedures to protect the confidentiality of these records and to ensure that the identity of any complainant or resident will not be disclosed except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq.;

- (7) Analyze data relating to complaints and conditions in long-term care facilities to identify significant problems and recommend solutions;
- (8) Prepare an annual report containing data and findings regarding the types of problems experienced and complaints reported by residents as well as recommendations for resolutions of identified long-term care issues;

- (9) Prepare findings regarding public education and community involvement efforts and innovative programs being provided in long-term care facilities; and
- (10) Provide information to public agencies, and through the State Ombudsman, to legislators, and others regarding problems encountered by residents or providers as well as recommendations for resolution. (1989, c. 403, s. 1; 1995, c. 254, s. 3; 1997-443, s. 11A.118(a).)

§ 143B-181.19. Office of Regional Long-Term Care Ombudsman; Regional Ombudsman; duties.

- (a) An Office of Regional Ombudsman Program shall be established in each of the Area Agencies on Aging, and shall be headed by a Regional Ombudsman who shall carry out the functions and duties of the Office. The Area Agency on Aging administration shall provide administrative supervision to each Regional Ombudsman.
- (b) Pursuant to policies and procedures established by the State Office of Long-Term Care Ombudsman, the Regional Ombudsman shall:
 - (1) Promote community involvement with long-term care facilities and residents of long-term care facilities and serve as a liaison between residents, residents' families, facility personnel, and facility administration;
 - (2) Receive and attempt to resolve complaints made by or on behalf of residents in long-term care facilities;
 - (3) Collect data about the number and types of complaints handled;
 - (4) Work with long-term care providers to resolve issues of common concern;
 - (5) Work with long-term care providers to promote increased community involvement;
 - (6) Offer assistance to long-term care providers in staff training regarding residents' rights;

- (7) Report regularly to the office of State Ombudsman about the data collected and about the activities of the Regional Ombudsman;
- (8) Provide training and technical assistance to the community advisory committees; and
- (9) Provide information to the general public on long-term care issues. (1989, c. 403.)

§ 143B-181.20. State/Regional Long-Term Care Ombudsman; authority to enter; cooperation of government agencies; communication with residents.

- (a) The State and Regional Ombudsman may enter any long-term care facility and may have reasonable access to any resident in the reasonable pursuit of his function. The Ombudsman may communicate privately and confidentially with residents of the facility individually or in groups. The Ombudsman shall have access to the patient records as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. §3001 et seq., and under procedures established by the State Ombudsman pursuant to G.S. 143B-181.18(6). Entry shall be conducted in a manner that will not significantly disrupt the provision of nursing or other care to residents and if the long-term care facility requires registration of all visitors entering the facility, then the State or Regional Ombudsman must also register. Any State or Regional Ombudsman who discloses any information obtained from the patient's records except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq., is guilty of a Class 1 misdemeanor.
- (b) The State or Regional Ombudsman shall identify himself as such to the resident, and the resident has the right to refuse to communicate with the Ombudsman.
- (c) **The resident has the right to participate in planning any course of action to be taken on his behalf by the State or Regional Ombudsman, and the resident has the right to approve or disapprove any proposed action to be taken on his behalf by the Ombudsman.**
- (d) The State or Regional Ombudsman shall meet with the facility administrator or person in charge before any action is taken to allow the facility the opportunity to respond, provide additional information, or take appropriate action to resolve the concern.

- (e) The State and Regional Ombudsman may obtain from any government agency, and this agency shall provide, that cooperation, assistance, services, data, and access to files and records that will enable the Ombudsman to properly perform his duties and exercise his powers, provided this information is not privileged by law.
- (f) If the subject of the complaint involves suspected abuse, neglect, or exploitation, the State or Regional Ombudsman shall notify the county department of social services' Adult Protection Services section of the county department of social services, pursuant to Article 6 of Chapter 108A of the General Statutes. (1989, c. 403, s. 1; 1993, c. 539, s. 1038; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 254, s. 4.)

§ 143B-181.21. State/Regional Long-Term Care Ombudsman; resolution of complaints.

- (a) Following receipt of a complaint, the State or Regional Ombudsman shall attempt to resolve the complaint using, whenever possible, informal technique of mediation, conciliation, and persuasion.
- (b) Complaints or conditions adversely affecting residents of long-term care facilities that cannot be resolved in the manner described in subsection (a) of this section shall be referred by the State or Regional Ombudsman to the appropriate licensure agency pursuant to G.S. 131E-100 through 110 and G.S.131D-2. (1989, c. 403.)

§ 143B-181.22. State/Regional Long-Term Care Ombudsman; confidentiality.

The identity of any complainant, resident on whose behalf a complaint is made, or any individual providing information on behalf of the resident or complainant relevant to the attempted resolution of the complaint along with the information produced by the process of complaint resolution is confidential and shall be disclosed only as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq. (1989, c. 403, s. 1; 1995, c. 254, s. 5.)

§ 143B-181.23. State/Regional Long-Term Care Ombudsman; prohibition of retaliation.

No person shall discriminate or retaliate in any manner against any resident or relative or guardian of a resident, any employee of a long-term care facility, or any other person because of the making of a complaint or providing of information in good faith to the State Ombudsman or Regional Ombudsman. (1989, c. 403.)

§ 143B-181.24. Office of State/Regional Long-Term Care Ombudsman; immunity from liability.

No representative of the Office shall be liable for good faith performance of official duties. (1989, c. 403.)

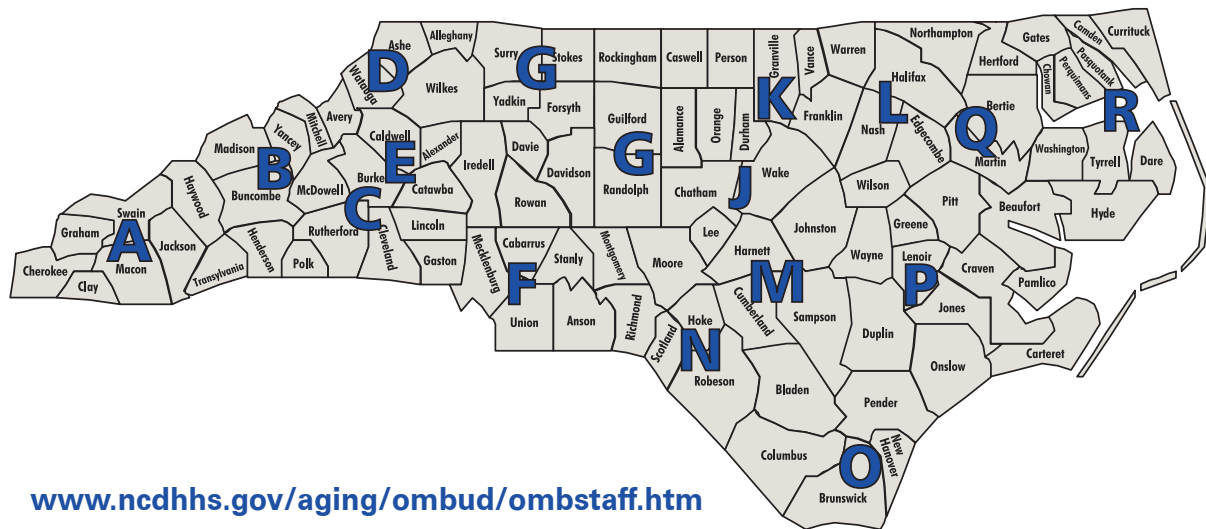
§ 143B-181.25. Office of State/Regional Long-Term Care Ombudsman; penalty for willful interference.

Willful or unnecessary obstruction with the State or Regional Long-Term Care Ombudsman in the performance of his official duties is a Class 1 misdemeanor. (1989, c. 403; 1993, c. 539, s. 1039; 1994, Ex. Sess., c. 24, s. 14(c).)

Appendix E

Area Agencies on Aging (AAA) Regional Long Term Care Ombudsmen

Area Agencies on Aging are offices established through the Older Americans Act that serve to facilitate and support the development of programs to address the needs of older adults in a defined geographic region (**see map**) and support investment in their talents and interests. In North Carolina, AAAs are located within regional Councils of Government. These AAAs have functions in five basic areas: (1) advocacy; (2) planning; (3) program and resource development; (4) information brokerage; and (5) funds administration and quality assurance.



www.ncdhhs.gov/aging/ombud/ombstaff.htm



State of North Carolina
Pat McCrory, Governor

Department of Health and Human Services
Aldona Z. Wos, M.D., Secretary

Dennis W. Streets, Director, Division of Aging and Adult Services
Sharon C. Wilder, State Long Term Care Ombudsman

www.ncdhhs.gov

N.C. DHHS is an equal opportunity employer and provider. 2/13